



Institutional Controls Implementation and Assurance Plan

Himco Site, Elkhart, Indiana

Bayer HealthCare LLC

GHD | 26850 Haggerty Road Farmington Hills, MI 48331 USA

039611 | Report No 40 | April 30, 2019



Table of Contents

1.	Introduction.....	1
2.	Site Details	2
2.1	Site Description	2
2.2	Site History.....	2
2.3	Property and Stakeholder Information	3
3.	Key Elements of Institutional Controls	4
3.1	General Elements	4
3.2	Specific Elements	6
3.2.1	Restrictions on Use of Landfill Property	6
3.2.2	Restrictions on Use of Residential Properties (East and South).....	8
3.2.3	Restrictions on Use of Parcel F Located South of the Landfill	9
3.2.4	Restrictions on Use of Construction Debris Area Residential Soil	10
4.	IC Maintenance Elements	11
4.1	IC Compliance Monitoring Reporting, & Certification	11
5.	IC Enforcement Elements	13
6.	IC Modification and Termination Elements	14
6.1	IC Modification	14
6.2	IC Termination	14

Figure Index

Figure 1	Site Location
Figure 2	Locations of Environmental Restrictive Covenants & Deed Notices

Table Index

Table 1	HIMCO Site Property Ownership & Institutional Controls
---------	--



1. Introduction

This Institutional Controls Implementation and Assurance Plan (ICIAP) also known as the Long-Term Stewardship (LTS) Plan presents procedures to implement, maintain and enforce institutional controls (ICs) at the Himco Site (Site), located in Elkhart, Indiana. GHD has prepared this ICIAP on behalf of the Performing Settling Defendants (PSDs), collectively known as the Himco Site Trust.

The Himco Site is a National Priorities List (NPL) site that was remediated pursuant to a Consent Decree (Civil Action No. 2:07cv304 (TS)) (CD). Appended to the CD (CD Appendix A) is the amended Record of Decision (ROD), which presents Remedial Action Objectives and a selected remedy. The Statement of Work (SOW), which is presented in the CD's Appendix B, identifies specific Remedial Action (RA) tasks, which include ICs to restrict use of the landfill property and certain adjacent properties.

The ICIAP is a document designed to systematically establish and document the activities associated with implementing and ensuring the long-term stewardship of ICs and specify roles and responsibilities. ICs were established as part of the remedy implementation under the CD, required to help minimize the potential for exposure to contamination and protect the integrity of the remedy. ICs will be monitored, maintained and enforced consistent with the plan presented in this ICIAP.

The lead Agency for the Site is the United States Environmental Protection Agency (USEPA) Region 5 with support from the Indiana Department of Environmental Management (IDEM).



2. Site Details

2.1 Site Description

The Site is a closed landfill located at the intersection of County Road 10 and North Nappanee Street in Cleveland Township, Elkhart County, Indiana. This former 60-acre unlined landfill, previously operated by Himco Waste Away Service, Inc., accepted waste including household refuse, construction rubble, medical waste, and calcium sulfate during its operation between 1960 and its eventual closure in 1976. **Figure 1** shows the Site location and **Figure 2** shows the layout of the Site, including property boundaries.

The Site consists of two major areas: the calcium sulfate-covered landfill and the 4-acre construction debris area (CDA). The CDA was subdivided into seven residential properties and one commercial property parcel.

Currently, the Site is a grassy field secured by a chain-link perimeter fence.

2.2 Site History

Prior to its commencing operation in 1960, part of the Site was used as a gravel pit.

In 1971 the Indiana State Board of Health (ISBH) identified the Site as an open dump.

In 1974 Himco Waste Away Services replaced six private, shallow water wells located near the Site that were experiencing color, taste and odor problems. The six shallow wells were replaced with deeper drilled wells. Himco signed a consent agreement with ISBH in 1975 that required Site closure by September 1976.

From 1974 to 1992, a number of environmental investigations were completed at the Site including a Remedial Investigation/Feasibility Study (RI/FS) from 1989 to 1992. Before the conclusion of the RI/FS, the USEPA added the Site to the NPL on February 21, 1990.

Upon completion of the RI/FS, the USEPA issued a Record of Decision (ROD), executed on September 30, 1993, which identified the selected Remedial Action (RA) for the Site. An Amended ROD (ROD-A) was issued on September 15, 2004 and prescribed: 1) enhancing the existing cover, ensuring at least 18 inches of soil cover throughout the landfill, and a gas management system, 2) removing debris and contaminated material from the CDA, 3) providing municipal drinking water to 39 homes south and southeast of the site, along with abandoning the drinking water wells from these homes, 4) implementing a long-term groundwater monitoring program, and 5) placing ICs on the landfill and other areas to limit future use, prohibit the installation of groundwater wells on site, and require the abandonment of private drinking water wells at homes provided with city water.

The Remedial Design/Remedial Action (RD/RA) was conducted pursuant to a CD, which became effective on November 27, 2007.

In 2011, the PSDs relocated CDA waste to the landfill, and completed the construction of a soil cover over the landfill in 2012. Simultaneously the PSDs installed new water mains in the neighborhood that is east of the Site and connected properties to the Elkhart municipal water supply as required by



signed Environmental Restrictive Covenants (ERC). USEPA approved the Construction Completion Report/Completion of Remedial Action Report (CRA, 2012) on October 31, 2012.

A landfill gas Passive Ventilation Trench (PVT) was installed in 2012 and was expanded in 2015 along the entire southern and eastern boundaries of the Site, consisting of slotted 4-inch Schedule 40 polyvinyl chloride (PVC) piping within a trench filled with a porous gravel column. The trench is approximately 3 ft wide and the slotted pipe was placed approximately 2 ft above the water table. In accordance with Part II, Section 4.2.3 of the ROD, the PSDs shall monitor the soil gas vented by the PVT to ensure that methane gas and hydrogen sulfide gas do not migrate off Site at concentrations greater than the Applicable or Relevant and Appropriate Requirements (ARARs).

Additionally, there are 28 permanent soil gas probes (SGPs) along the southern and eastern boundaries and there are 27 groundwater monitoring wells; all are subject to biennial sampling in conjunction with a biennial inspection.

After USEPA's Preliminary Closeout Report (PCOR) on July 19, 2012, the Himco Trust initiated the Operation & Maintenance (O&M) phase of the remedy and continues to implement and maintain compliance with the required O&M Plan. The most recent Five Year Review (FYR) was completed on March 1, 2016, which is included in the attachments. Because hazardous substances, pollutants, or contaminants remain in place at the site above levels that allow for unlimited use and unrestricted exposure (UU/UE), USEPA plans to conduct a second FYR at the Himco site no later than March 2021.

In July 2018, the Himco Trust completed an additional sampling effort for remaining private wells near the landfill. The associated Private Well Sampling Report (GHD, September 2018) issued to USEPA/IDEM showed that all private wells exhibited arsenic results below the Maximum Contaminant Levels (MCL), with the exception of one address, 1241 N. Nappanee. In coordination with USEPA/IDEM, the Himco Trust is currently coordinating efforts to connect this property to the available public water supply and to abandon the existing well on the property in compliance with 312 IAC § 13-10-2.

In summary, the Himco Trust has successfully completed the remedies described above. Ongoing tasks include: ongoing soil gas monitoring, groundwater monitoring, inspections, routine reports, and IC implementation/assurance.

2.3 Property and Stakeholder Information

The landfill site property is currently owned by five (5) different private entities: Bayer Healthcare LLC, Cooper Land Company of New Jersey, Inc. (an affiliate of Bayer HealthCare, LLC), Indiana Michigan Power Company, CLD Corporation, and Giada Holdings, LLC (a Limited Liability Company that recently purchased landfill parcel J, formerly owned by Zap and CLD Corporation). All entities or their predecessors have granted access to the PSDs in the form of recorded Temporary Access Agreements binding on all successors and assigns. All landfill and surrounding private properties potentially affected by groundwater contamination that may be related to the Site have either signed ERCs or have implemented Deed Notices (DN), both of which are filed with the Elkhart County Recorder's Office. Site ownership for each of the listed entities is illustrated on **Figure 2**, which corresponds with Owners and Tax Identification Numbers presented on **Table 1**.



3. Key Elements of Institutional Controls

3.1 General Elements

USEPA defines ICs as non-engineered instruments, such as administrative and legal controls, that help to minimize the potential for exposure to contamination and/or protect the integrity of a response action. ICs are typically designed to work by limiting land and/or resource use or by providing information that helps modify or guide human behavior at a site.

Section 1.4 and 1.5 of the Himco Site ROD includes ICs in three (3) different operable units of the selected remedy: the 60 acre landfill, the residents living south of the landfill and the residential area east and southeast of the landfill. These ICs will prevent exposure to groundwater that could have water quality test results that exceed MCL.

The selected remedy for the 60 acre landfill

Items 7 & 8 of the ROD Selected Remedy for the 60 acre landfill:

“Institutional controls in the form of deed restrictions, or other appropriate institutional controls, which prohibit both future groundwater use and future drilling or digging into the landfill cover, will be implemented.”

“Institutional controls will be placed on the landfill in form of deed restrictions, or other appropriate ICs, to limit the land reuse to industrial, recreational, or commercial. However a future land use feasibility study must be conducted by the entity responsible for the redevelopment of the property to determine the property’s suitability for a particular reuse scenario. Any anticipated building construction on Himco Dump will have to be evaluated and approved by EPA, in consultation with Indiana Department of Environmental Management (IDEM) to determine the soil gas interaction/impact on any structures on the landfill, as well as the displacement of contaminated soils, wastes, etc.”

The selected remedy for the CDA and the residents living south of the landfill

Items II(A)(a)(2)(b) and II(B)(e) of the ROD Selected Remedy for the CDA and the residents living south of the landfill:

“Establish ICs in parallel with the landfill.”

Item III(A) of the ROD Selected Remedy for the CDA and Parcel F:

“If the excavated residential soils are not consolidated to parcel F, then an institutional control in the form of a deed restriction, or other appropriate ICs will be applied to the parcel to be zoned as commercial/industrial only, since the 695 mg/kg of lead detected in the soil is an acceptable level for an industrial setting.”

Item IV(B) of the ROD Selected Remedy for the CDA and the residents living south of the landfill:

“Establish institutional controls in the form of a deed restriction, or other appropriate ICs applied to each property to prohibit future installation of private water wells for groundwater use.”



The selected remedy for the residential area east and southeast of Himco Dump

Item 3 of the ROD Selected Remedy for the residential area east and southeast of Himco Dump:

"...Establish institutional controls in the form of a deed restriction, or other appropriate ICs applied to each property to prohibit future groundwater use."

Section 1.5 of the Himco Site ROD (CD Appendix A) presents a summary list of ICs as follows.

Landfill Property

- *"Limit land use to industrial, recreational, or commercial uses either by recording a deed restriction or other appropriate institutional controls."*
- *Prohibit future groundwater use either by recording a deed restriction or other appropriate institutional controls."*
- *Prohibit future drilling or digging into the landfill cover either by recording a deed restriction or other appropriate institutional controls."*

Residential Properties (East and South)

- *"Prohibit future installation of any private wells for groundwater use and abandon the private well for each residential property after installation of the municipal water supply, per 312 IAC 13-10-2, ARAR's. See Table 15 (of the ROD), Himco Dump Well Abandonment List."*
- *Prohibit future installation of any private wells for groundwater use either by recording a deed restriction or other appropriate institutional controls."*
- *Prohibit the use of private wells in the area located south of Himco Dump located in the City of Elkhart up to the former Bower Street Well Field either by recording a deed restriction or other appropriate institutional controls."*

Parcel F Located South of the Landfill

- *"Limit land use to industrial, or commercial only, either by recording a deed restriction or other appropriate institutional controls."*

CD paragraph 26(b)(1)–(4) reiterates ROD Section 1.5 and adds additional ICs to be required if any construction debris is left on the residential properties south of the landfill or if construction debris is placed on Parcel FICs:

1. *"Restrictions on Use of Landfill Property"*
 - a. *Limit land use to industrial, recreational, or commercial uses either by recording a deed restriction or other appropriate institutional controls."*
 - b. *Prohibit future groundwater use either by recording a deed restriction or other appropriate institutional controls."*
 - c. *Prohibit future drilling or digging into the landfill cover either by recording a deed restriction or other appropriate institutional controls."*
2. *Restrictions on Use of Residential Properties (East and South)*



- a. *Prohibit installation of private water wells for groundwater use and abandon the private well for each residential property receiving municipal water as a result of the Remedial Action.*
 - b. *Prohibit installation of private water wells for groundwater use for each residential property which received municipal water supply in 1992 as a result of the Remedial Removal Action.*
 - c. *Prohibit use of private water wells in the area located south of Himco Dump that are within the Elkhart City limits.*
3. *Restrictions on Use of Parcel F Located South of the Landfill*
 - a. *Limit land use to industrial, recreational or commercial only, either by recording a deed restriction or other appropriate institutional controls.*
 - b. *Establish institutional controls in parallel with the landfill if the excavated materials from the Construction Debris Area are disposed of on Parcel F.*
4. *Restrictions on Use of Construction Debris Area Residential Soil*
 - a. *If a soil cover is used for the residential soil in the Construction Debris Area (CDA), fence the soil cover and establish institutional controls or other appropriate institutional controls in parallel with the landfill.”*

3.2 Specific Elements

The ICs that have been implemented are listed in this section. A complete list of properties subject to ICs is presented in **Table 1**.

3.2.1 Restrictions on Use of Landfill Property

Restrictions on use of the landfill property apply to the current property owners, which are:

1. Bayer Healthcare LLC – Parcel C
2. Cooper Land Company of New Jersey, Inc. – Parcels D, F, Q, and S
3. Indiana Michigan Power – Parcel G
4. Giada Holdings, LLC – Parcel J
5. CLD Corporation – Parcel that bisects Parcel J

Land use restrictions are memorialized in ERCs signed by Bayer Healthcare LLC and Indiana Michigan Power filed with the Elkhart County Recorder. Four (4) landfill parcels (D, F, Q, and S) – for which a signed ERC was in place – were transferred in January 2018 to Cooper Land Company of New Jersey Inc., an affiliate of Bayer HealthCare LLC. In 2018, Giada Holdings, LLC purchased Parcel J in a delinquent tax sale; this landfill parcel was formerly owned by Zap Distributing LLC and CLD Corporation. Since the former owners did not sign an ERC, a DN was placed on this parcel in April 2018. A recorded Temporary Access Agreement also places some additional controls on the property. CLD Corporation currently owns a thin 1.38 acre parcel (that bisects Parcel J) and this parcel is subject to an ERC. Additionally, the Elkhart County Private Well Ordinance No. 2017-24 applies to the landfill property and all surrounding parcels and places further restrictions on the installation of any groundwater wells.



The restrictions and obligations memorialized in each **ERC** are:

1. *"Prohibit any activity at the Himco Site that may interfere with any component of the remedy or activities pursuant to the Consent Decree, long-term monitoring or measuring necessary to assure the effectiveness and integrity of any response action, selected or undertaken at the Himco Site.*
2. *Not use the Himco Site for residential purposes, including, but not limited to daily care facilities (e.g. daycare centers, schools and senior citizen facilities), and shall limit the reuse to industrial, recreational, or commercial.*
3. *Neither engage in nor allow the installation or use of private drinking water wells on the Himco Site. There shall be no consumptive, extractive or other use of the groundwater underlying the Himco Site that could cause exposure of humans or animals to the ground water underlying the Himco Site, other than for site investigation and/or remediation purposes, without prior EPA and/or IDEM approval.*
4. *Neither engage in nor allow the digging or drilling into or the excavation of soil anywhere on the Himco Site as depicted on Exhibit B without first receiving written approval by the USEPA and/or IDEM at least thirty (30) days prior to the commencement of such work. Any removal, excavation or disturbance of soil from within the Affected Areas of the Himco Site must be conducted in accordance with all requirements of the Occupational Health and Safety Administration (OSHA) and Indiana OSHA (IOSHA), and soil that is removed, excavated or disturbed from the Himco Site must be managed and disposed of in accordance with all applicable federal and state laws and regulations.*
5. *Arrange for a future land use feasibility study to be conducted by any entity responsible for the redevelopment of the Real Estate (to determine the Real Estate's suitability for a particular reuse scenario via an evaluation by the EPA in consultation with IDEM).*
6. *At the completion of remediation, Owner shall modify this ERC, if EPA and/or IDEM determine that additional land use restrictions are necessary to be protective of human health and the environment as a result of residual contamination that will remain on the Real Estate."*

General Provisions of the landowner ERCs require the restrictions and obligations to:

- Prevent any conveyance of title, easement or other interest in the Real Estate from being consummated without adequate and complete provisions for compliance with the CD.
- Run with the land to subsequent landowners.
- Be binding on future landowners.
- Provide written notice of the presence of hazardous substances to future landowners or occupants.
- Provide notice of any conveyance to EPA, IDEM, and the PSD.
- Be governed by Indiana law.
- Provide access for IDEM and EPA.



In addition to the provisions cited above, the ERC instructs Indiana Michigan Power to direct the HIMCO Remediation Trust to re-record the ERC, including any subsequent modifications and amendments, forty-nine years after the date of first recording. The date of first recording was March 24, 2008 making the forty-nine year anniversary March 24, 2057. However, this requirement stems from a vestige of Indiana law that was changed in 2008 (see SEA 46, P.L. 18-2008, SECTIONS 2-3, Ind. Code 32-20-3-2). Therefore, re-recording is no longer necessary, even for ERCs recorded before the change in the law.

The Deed Notices provide notice to affected landowners that:

"...EPA concluded in the ROD for this Site that the activities listed below may increase the risk of exposure to contamination and present an imminent and substantial endangerment to public health, welfare, or the environment:

- Coming into contact with contaminated groundwater in the landfill portion of the Site ("Landfill" through drilling or digging into the landfill;*
- Using the Landfill for residential purposes without appropriate institutional controls on the Landfill;*
- Intrusive drilling or digging at the Landfill, potentially exposing persons to contaminants in the soil or landfill gases present in the Landfill; and*
- Maintaining, operating or installing private wells or otherwise utilizing the groundwater at the Site."*

"...EPA intends to use this Notice as an IC as part of the Remedy to help reduce future potential exposure contamination. A person may be liable under Section 107(a) of CERCLA, 75 U.S.C. § 9607(a) if the person conducts activities at the Site which, among other things, cause the release of hazardous substances on-site. In order to qualify for certain conditional liability protections, namely the innocent landowner, bona fide prospective purchaser, or contiguous landowner protections under Sections 101(35)(A), 101(40)(F), 107(q)(1)(A)(v) of CERCLA, 42 U.S.C. §§ 9601(40)(F), and 9607(q)(1)(A)(v), a person must, among other things, (i) comply with any land use restrictions established or relied on in connection with the response action at a facility including the ROD for this Site, and (ii) not impede the effectiveness or integrity of any IC employed at the facility in connection with a response action, including the ROD for the Site."

The Temporary Access Agreement filed with the Elkhart County recorder's office allows the PSDs to access the property to install a fence, perform sampling, construct and maintain the landfill cover, and perform other remediation activities. The Elkhart County Private Well Ordinance generally prohibits "new private water well construction and installation in areas of known groundwater contamination," which is defined to include "Superfund Sites, Environmental Restrictive Covenant Sites, and other ground water use restriction sites," without the approval of the designating agency (here, USEPA).

3.2.2 Restrictions on Use of Residential Properties (East and South)

Private residential properties located along County Road 10 (south of the landfill) and located in a subdivision across John Weaver Parkway (east of the landfill) were selected to have ERC's. The Himco Trust previously obtained ERCs for the majority of the properties. In April 2018, Deed Notices



were recorded with the Elkhart County Recorder for residential properties that did not previously sign ERCs. The Elkhart County Private Well Ordinance also applies to these properties.

Property addresses, owners, and IC status are listed in **Table 1**.

The ERC land use restrictions and obligations are:

- a. Prohibit any activity at the Real Estate that may interfere with the response activities, long-term monitoring or measures necessary to assure the effectiveness and integrity of any response action, or component thereof, selected and/or undertaken at the Real Estate pursuant to the Consent Decree.
- b. Neither engage in nor allow the installation or use of private drinking water wells on the Real Estate. There shall be no consumptive, extractive or other use of the groundwater underlying the Real Estate that could cause exposure of humans or animals to the ground water underlying the Real Estate, other than for site investigation and/or remediation purposes, without prior EPA and/or IDEM approval.
- c. Permit the PSDs or their representatives to permanently abandon operation of any private water well for groundwater use on the Real Estate in accordance with 312 IAC 13-10-2 following connection to municipal water supply.
- d. At the completion of remediation, Owner shall modify this ERC, if necessary, at the request of EPA and IDEM to reflect any remaining contamination at the subject property.

The aforementioned general provisions of the landowner ERC/DN/Well Ordinance also remain applicable to this area.

3.2.3 Restrictions on Use of Parcel F Located South of the Landfill

Parcel F is now owned by Cooper Land Company of New Jersey, Inc. It is undeveloped land that is part of the landfill with frontage on County Road 10.

The restrictions on land use for Parcel F are the same as those aforementioned conditions for the landfill properties, except Parcel F is not subject to a future land use feasibility study. The ERC land use restrictions and obligations are:

- a. Prohibit any activity at the Himco Site that may interfere with any component of the remedy or activities pursuant to the Consent Decree, long-term monitoring or measuring necessary to assure the effectiveness and integrity of any response action, selected or undertaken at the Himco Site.
- b. Not use the Himco Site for residential purposes, including, but not limited to daily care facilities (e.g. daycare centers, schools and senior citizen facilities), and shall limit the reuse to industrial, recreational, or commercial.
- c. Neither engage in nor allow the installation or use of private drinking water wells on the Himco Site. There shall be no consumptive, extractive or other use of the groundwater underlying the Himco Site that could cause exposure of humans or animals to the ground water underlying the Himco Site, other than for site investigation and/or remediation purposes, without prior EPA and/or IDEM approval.



- d. Neither engage in nor allow the digging or drilling into or the excavation of soil anywhere on the Himco Site as depicted on Exhibit B without first receiving written approval by the EPA and/or IDEM at least thirty (30) days prior to the commencement of such work. Any removal, excavation or disturbance of soil from within the Affected Areas of the Himco Site must be conducted in accordance with all requirements of IOSHA/OSHA, and soil that is removed, excavated or disturbed from the Himco Site must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- e. At the completion of remediation, Owner shall modify this ERC, if EPA and/or IDEM determine that additional land use restrictions are necessary to be protective of human health and the environment as a result of residual contamination that will remain on the Real Estate.

General Provisions of the Parcel F Environmental Restrictive Covenants include the following restrictions and obligations to:

- Prevent any conveyance of title, easement or other interest in the Real Estate from being consummated without adequate and complete provisions for compliance with the CD.
- Run with the land to subsequent landowners.
- Be binding on future landowners.
- Direct the HIMCO Remediation Trust to re-record the Environmental Restrictive Covenants, including any subsequent modifications and amendments forty nine years after the date of first recording. The date of first recording was February 2, 2008 making the forty nine year anniversary February 2, 2057. However, this requirement stems from a vestige of Indiana law that was changed in 2008 (see SEA 46, P.L. 18-2008, SECTIONS 2-3, Ind. Code 32-20-3-2). Therefore, re-recording is no longer necessary.
- Provide written notice of the presence of hazardous substances to future landowners or occupants.
- Provide notice of any conveyance to EPA, IDEM and the Performing Settling Defendants.

3.2.4 Restrictions on Use of Construction Debris Area Residential Soil

Construction debris waste was previously removed from the rear of the residential properties along County Road 10 in lieu of installing a soil cover and protecting the area with an IC. Development and groundwater use restrictions remain in place as described above.



4. IC Maintenance Elements

The essential responsibility of IC maintenance is to ensure that IC instruments remain active and that property owners remain compliant with the restrictions and notice requirements of their individual Environmental Restrictive Covenants. ICs will be maintained until cleanup objectives have been achieved (i.e., until groundwater sampling results are less than applicable MCL levels for current parameters). Any IC non-compliance issues identified will be quickly addressed. The Himco Trust will undertake the following monitoring, reporting, and certification actions to assure compliance with ICs.

4.1 IC Compliance Monitoring, Reporting, & Certification

Annual Report

The landfill property is inspected biennially (along with groundwater/soil gas sampling events) to ensure that engineering controls remain in place. Land use is observed as a part of the inspection. Reporting the status of land use restrictions on the landfill property will occur in the quarterly progress reports that are already required under the CD (USEPA temporarily alleviated the monthly recurrence to quarterly on October 11, 2018). An annual certification that the landfill ICs remain in place will be submitted to USEPA by the Himco Trust.

- **Per the FYR, an Annual IC Monitoring, Compliance Assurance, and Certification Report (Annual Report) that will include a certification statement and results of IC reviews will be submitted to USEPA. It will demonstrate that the site was inspected to ensure no inconsistent uses have occurred, ICs remain in place and are effective, and any necessary contingency actions have been executed.**

Landfill Property

Since the Himco Site Trust controls the majority of the landfill property, they will not make any land use proposal nor cause any drilling or excavation that is not in conformance with the CD. Engineering controls and site land use are inspected and reported biennially to USEPA/IDEM under the Site Operation and Maintenance Plan.

- **The Himco Trust will declare compliance with the ERC in quarterly progress reports and in the Annual Report.**

Residential Properties (East and South)

Each IC defines restrictions and obligations for each land owner. Prohibited activity covers any activity that could interfere with the effectiveness and integrity of the remedy; in particular the installation and operation of groundwater wells is prohibited. All registered wells associated with properties that were connected to a municipal water supply have been abandoned in accordance with 312 IAC § 13-10-2.

To ensure future compliance and to ensure that property owners continue to adhere to the ERC/DN, the Himco Trust will verify – by December of the calendar year immediately preceding each FYR – with the Elkhart's Public Works and Utilities Department that no groundwater drinking wells have been



installed in the affected locations. (Per Elkhart Code 156.043(a): "Licensed plumbers and property owners shall report private wells used for potable water and for irrigation to the city Public Works and Utilities Department.")

- **The Himco Trust will maintain compliance by verifying the absence of new groundwater drinking wells and changes in land use once during each FYR cycle and declare compliance in the Annual Report.**

Property Ownership & Zoning

General provisions of the ERC's require that the land use restrictions be acknowledged and passed on to subsequent landowners or land users.

To ensure that any potentially new property owner receives a copy of the ERC/DN, the Himco Trust will verify – by December of the calendar year immediately preceding each FYR – with the Elkhart County Recorder's Office that property ownership and zoning are unchanged. If new owners are identified, the Himco Trust will contact them to verify receipt the ERC/DN and ensure the associated compliance requirements are maintained.

- **The Himco Trust will maintain compliance by verifying implemented land use restrictions via the Elkhart County Recorder's office (and current owners as needed) once during each FYR cycle and declare compliance in the Annual Report.**



5. IC Enforcement Elements

Any breach of an IC by any party subject to such IC could be an event triggering enforcement of the IC.

- For the landfill:
 - Unpermitted change in land use
 - Unpermitted excavation
 - Unpermitted installation or use of a water well
 - Any other activity that may be interpreted to contravene the ERC
- For the residential properties:
 - Unpermitted change in land use
 - Unpermitted installation or use of a water well
 - Restricted access to existing monitoring well
 - Any other activity that may be interpreted to contravene the ERC
- For Parcel F:
 - Unpermitted change in land use
 - Any other activity that may be interpreted to contravene the ERC

Triggering events discovered through the monitoring provisions of the IC Maintenance Elements will be reported to USEPA and IDEM in the quarterly progress reports.

The Himco Trust, which is responsible for enforcing ICs, will formally notify the affected property owner of any and all triggering events and will request a voluntary plan to conform to the ERC within 30 days. The voluntary plan will specify a reasonable schedule to restore compliance with the ERC.

If the property is not quickly brought into compliance with the ERC or a voluntary plan is not developed, the Himco Trust will coordinate with USEPA/IDEM and initiate further efforts as requested by USEPA/IDEM, up to and including legal action, to enforce compliance with the ERC/DN.



6. IC Modification and Termination Elements

ICs can be modified or terminated in response to changing conditions at any of the properties where an existing IC is in effect or at new properties that may be affected by changing environmental conditions that can be attributed to the landfill.

6.1 IC Modification

IC modification can be initiated by the Himco Trust, USEPA or IDEM. IC modification may be an appropriate response to any of the following conditions:

- An approved change in land use
- Contraction or expansion of the groundwater contaminant plume
- Other qualifying changes in environmental conditions

6.2 IC Termination

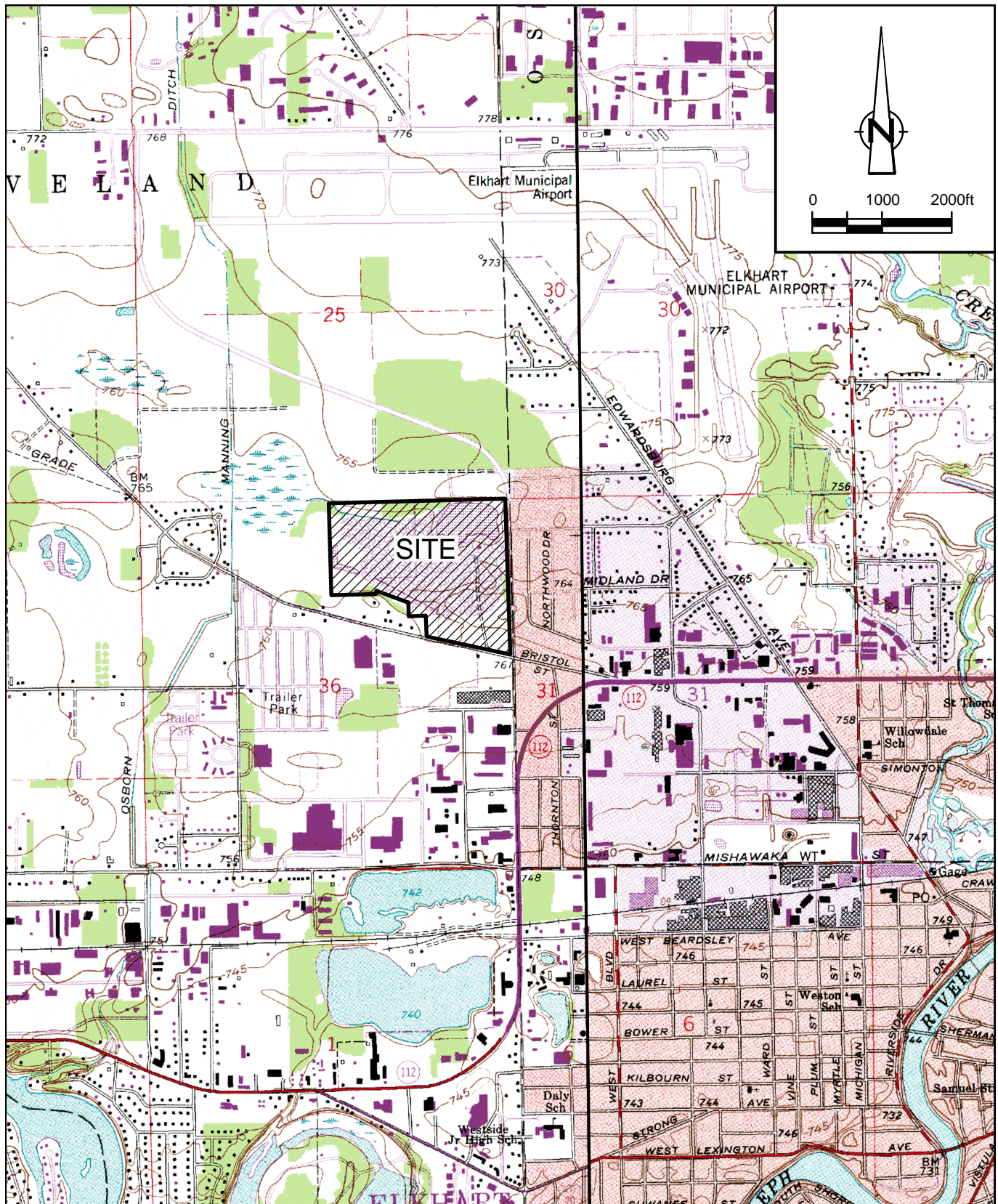
IC termination can be initiated by the Himco Trust, USEPA or IDEM. IC termination will require USEPA, IDEM, and property owner agreement.

IC termination can be initiated when remedial action performance objectives can be demonstrated.

For the landfill IC termination can be initiated when the landfill is demonstrated to no longer be a continuing source of groundwater contamination.

For groundwater IC termination could be initiated when groundwater contamination can be demonstrated to be less than groundwater MCL's.

The Himco Trust is committed to coordinating with USEPA/IDEM to ultimately delist the site from the NPL and eventually redevelop/repurpose the site in the future in compliance with the ICs.



SOURCE: USGS QUADRANGLE MAPS;
ELKHART AND OSCEOLA, INDIANA



FIGURE 1
SITE LOCATION
HIMCO SITE
Elkhart, Indiana



Table 1
HIMCO Site Property Ownership IC's

No.	Address (CD Parcel)	Tax Identification Number	Property Owner	IC Instrument
Landfill Parcels				
1	Consent Decree Parcel C	01-36-226-001-006	Bayer Healthcare LLC	ERC 7/30/13
2	Consent Decree Parcel D, F, Q, & S	01-36-251-015-005; 01-36-276-003-005; 01-36-251-013-005; 01-36-276-001-006	Cooper Land Company of New Jersey, Inc. (an affiliate of Bayer Healthcare LLC)	ERC 1/15/09
3	Consent Decree Parcel G	01-36-276-004-006	Indiana Michigan Power	ERC 3/24/08
4	Consent Decree Parcel J	01-36-201-001-005	Giada Holdings, LLC (formerly owned by Zap and CLD)	DN 4/25/18
5	Thin Parcel bisecting J ("FF")	01-36-201-002-005	Wells Fargo Trustee for CLD Corporation	ERC 2/28/18
Residential Parcels				
1		02-31-101-001-026		ERC 12/3/09
2		02-31-102-001-026		ERC 4/2/09
3		02-31-101-002-026		ERC 12/3/09
4		02-31-102-002-026		ERC 12/3/09
5		02-31-101-003-026		ERC 11/11/09
6		02-31-102-003-026		ERC 11/10/09
7		02-31-101-004-026		ERC 12/3/09
8		02-31-102-004-026		ERC 2/29/08
9		02-31-101-005-26		DN 4/25/18
10		02-31-102-005-026		ERC 12/3/09
11		02-31-101-006-026		ERC 12/3/09
12		02-31-102-006-026		ERC 12/3/09
13		02-31-101-007-026		ERC 12/3/09
14		02-31-102-007-026		ERC 12/3/09
15		02-31-101-008-026		ERC 2/29/08
16		02-31-102-008-026		ERC 1/15/09
17		02-31-101-009-026		ERC 2/3/09
18		02-31-101-010-026		ERC 2/29/08
19		02-31-101-011-026		ERC 2/29/08
20		02-31-101-012-026		ERC 1/31/08
21		02-31-101-013-026		ERC 9/4/08
22		02-31-101-014-026		ERC 2/29/08
23		02-31-177-001-026		ERC 9/4/08
24		02-31-177-002-026		ERC 2/29/08
25		02-31-177-003-026		ERC 2/29/08
26		02-31-151-001-026		ERC 2/29/08
27		02-31-151-002-026		ERC 2/29/08
28		02-31-151-003-026		ERC 2/29/08
29		02-31-151-004-026		ERC 2/29/08
30		025-31-152-017 and 018-026		ERC 2/29/08
31		02-31-152-019-026		ERC 12/3/09
32		02-31-151-008-026		ERC 9/4/08
33		02-31-151-007-026		ERC 9/4/08
34		02-31-151-006-026		ERC 12/3/09
35		02-31-151-005-026		ERC 7/28/09
36		02-31-152-001-026		ERC 11/27/07
37		02-31-152-003-026		ERC 2/29/08
38		02-31-152-004-026		ERC 2/29/08
39		02-31-152-002-026		ERC 2/29/08
40		01-36-251-019-005		ERC 2/29/08
41		01-36-251-008-005		ERC 2/29/08
42		01-36-252-003-005		ERC 3/24/08
43		01-36-251-007-005		ERC 2/29/08
44		01-36-251-006-005		ERC 3/24/08
45		01-36-251-005-005		DN 4/25/18
46		01-36-251-004-005		DN 4/25/18
47		01-36-251-017-005		ERC 4/6/16
48		01-36-251-020-005		DN 4/25/18
49		01-36-251-001-005; 01-36-251-021-005 01-36-126-001-005		ERC 2/1/18

Notes:

- 1 Engineering Controls for the landfill have been met by providing appropriate soil cover, vegetation, drainage control, and soil gas venting.
- 2 Engineering Controls for all affected private property owners have been implemented via connection to municipal water supply and abandoning private wells.
- 3 Cleanup objectives include meeting MCL's for groundwater contaminants including: arsenic, benzene, chloroform, 1,2-DCA(EDC), 1,2-DCP, vinyl chloride, calcium, iron, manganese, sodium, sulfate, 1,1-DCA, and cis-1,2-DCE.
- 4 Properties without Environmental Restrictive Covenants (ERC) were subject to Deed Notices (DN) implemented on April 25, 2018.
- 5 ERC's & DR's memorialize the Institutional Controls (IC), which dictate:

Institutional Controls	Landfill Parcels	Residential Parcels
Prohibit activity that interferes with the remedy.	X	X
Prohibit groundwater use and installation of private wells.	X	X
Abandon private wells.		X
Prohibit digging/drilling into landfill cover.	X	
Limit reuse to industrial, recreational, or commercial.	X	